

## REMARKS

### Amendment / Additional Claim

Claims 1-12 are currently pending. Claims 6-12 were withdrawn from consideration. Claim 1 is currently amended. Claims 4 and 5 are canceled. Claim 13 is added and is supported in the specification at page 5, lines 11-13 and in FIGURES 1 and 2. Claim 13 is readable on elected Species I, drawn to FIGURE 2.

### Declaration

The declaration was said to be defective for failing to comply with 37 C.F.R. § 1.67(a) and 37 C.F.R. § 1.56. A Supplemental Combined Declaration and Power of Attorney is being submitted herewith.

### Objection to Claim 4

Claim 4 is objected to due to an alleged inconsistency between the preamble and the body of the claim with respect to whether the claim positively recites the combination of the sensor and the circuit or just the sensor. Claim 4 is currently canceled since the elements of previous Claim 4 are now incorporated into Claim 1. With respect to the alleged inconsistency, Claim 1, as currently amended, specifies that "the holder has a holder main body that is affixed to a respiratory circuit." Thus, the circuit itself is not positively recited but is instead a point of reference for placement of the holder main body. The claim also states "wherein the length of the extended protrusion is longer than a diameter of a respiratory circuit." The circuit itself is again not positively recited, but, rather, the circuit's diameter is used as a relative measure for the length of the extended protrusion, which is positively recited.

Rejections Under 35 U.S.C. § 102(b)

A. Clawson et al. (U.S. Patent No. 4,453,835)

Claims 1, 2 and 4-5 are rejected under 35 U.S.C. § 102(b) as being anticipated by Clawson et al., U.S. Patent No. 4,453,835 (hereafter "Clawson"). Claim 1 is currently amended. Claim 2 depends from Claim 1. Claims 4-5 are canceled.

Applicants disagree with the Examiner's characterization of Clawson. The Office Action states that "Clawson shows a temperature probe . . . comprising a holder including a main body having a curved projection 60 made of thermally non-conducting material (Col. 5, line 1), where the sensor is at the end of the projection . . . ." In Clawson, the curved projection 60 is the body portion of the probe 10. It is formed of a material with low thermal conductivity (Col. 5, line 1). The sensor is not at the end of the curved projection 60 but, rather, is at the end of a sensor sheath 22, which is made from thermally conductive material (Col. 3, line 33). Thus, in Clawson there is no "curved projection 60 made of thermally non-conducting material, where the sensor is at the end of the projection."

Clawson does not teach an extended protrusion that is affixed to a holder main body, the extended protrusion extending from the holder main body towards the inside of a respirator flow path, a sensor being affixed in the vicinity of the tip of the extended protrusion and installed inside the inspired air flow path, and the heat transfer suppressing portion being formed on the extended protrusion. As discussed above, the sensor sheath 22 of Clawson does not have a heat transfer suppression portion formed thereon. Further, Clawson does not recite a heat transfer suppressing portion that "is a curved portion that is a portion of the extended protrusion," as is currently recited in applicants' Claim 1. The holder main body of Clawson 60, as is shown in FIGURES 3 and 4, is in the shape of a right angle, but it is not a portion of an extended protrusion extending from a holder main body, nor does it have a sensor affixed in the vicinity of its tip.

Furthermore, Clawson does not recite the element "wherein the length of the extended protrusion is longer than a diameter of a respiratory circuit," as is recited in currently amended Claim 1. As discussed above, the sensor sheath 22 of Clawson is comprised of good thermal conduction material and is therefore not comparable to the current extended protrusion as the extended protrusion has a heat transfer suppressing portion formed thereon. In Clawson, it is the sensor sheath 22 that is subjected to the temperature to be measured (Col. 3, lines 29-30), i.e., the portion intended to be inserted into the air flow circuit. Moreover, the sensor sheath 22 of Clawson is straight and not curved. Therefore, its length cannot be longer than a diameter of a respiratory circuit in which it is inserted.

Claim 2 is not anticipated by Clawson for the same reasons, since Claim 2 depends from Claim 1.

B. Soji (Japanese Patent No. 11-57009)

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Soji, Japanese Patent No. 11-57009 (hereafter "Soji"). Claim 1 is currently amended. Claim 2 depends from Claim 1. Claim 4 is canceled.

Soji does not recite a heat transfer suppressing portion that "is a curved portion that is a portion of the extended protrusion," as is currently recited in applicants' Claim 1. Soji teaches a base 30 with a stem 31 that has at least one sensor housing means 32 and 33 protruding from its end furthest from base 30 (page 41). Neither stem 31 nor sensor housing means 32, 33 is curved or has a curved portion (see FIGS. 1 and 3).

Furthermore, Soji does not recite the element "wherein the length of the extended protrusion is longer than a diameter of a respiratory circuit," as is recited in currently amended Claim 1. The sensor housing means 32, 33 are straight and not curved, therefore, their length cannot be longer than the diameter of the respiratory circuit in which they are inserted.

Claim 2 is not anticipated by Soji for the same reasons, since Claim 2 depends from Claim 1.

Rejection Under 35 U.S.C. 103(a)

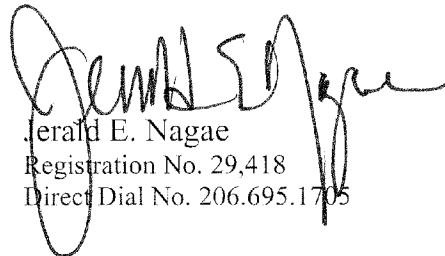
Claim 3 is rejected under 35 U.S.C. § 103(a) as unpatentable over Clawson et al. in view of applicants' statement that it is known to locate a temperature sensor inside an incubator. Applicants disagree with the Examiner's characterization that applicants "admitted in the specification that it is known in the prior art to locate such sensors in the incubator, to get accurate measurements." Applicants do not indicate that locating a temperature sensor inside an incubator would result in accurate measurements but, in fact, teaches away from such a placement with the statement "if a temperature sensor is installed inside the incubator, the temperature sensor is heated due to the heater, and there is the fear that the accuracy of detection deteriorates." (Page 1, line 24–page 2, line 2.) Thus, Clawson in view of "applicants' admission" does not render Claim 3 obvious. Furthermore, for the same reasons that are provided above as to why Clawson does not anticipate Claim 1, the differences between Claim 3 and Clawson in view of "applicants' statement" does not make the subject matter of Claim 3 obvious.

CONCLUSION

With the foregoing amendments and remarks, applicants respectfully submit that all of the claims in the present application are now in condition for allowance and early reconsideration to this end is respectfully requested.

Respectfully submitted,

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